



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2009

Mr. Christopher D. Taylor
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-01130

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 333417 (city reference number LGL-08-1092).

The Waco Police Department (the "department") received a request for all incident reports regarding a specified address since July 23, 2007. You state you have provided some of the requested information to the requestor. You claim portions of the submitted incident reports and 9-1-1 call reports are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(a), (b). You claim some of the submitted information is confidential under section 552.101 of the Government Code. You did not, however, claim this exception by the ten-business-day deadline. Thus, we find the department failed to comply with the requirements of section 552.301 with respect to its claim under section 552.101. Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claim under the exception at issue. However, because section 552.101 is a mandatory exception to

disclosure, we will consider the applicability of this exception, along with your timely-raised claims under sections 552.108 and 552.130, to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make only the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You state the City of Waco is part of an emergency communication district established under section 772.318. You have marked the telephone numbers and addresses in the submitted 9-1-1 call reports you seek to withhold under section 772.318. We note one of the marked addresses appears to be the cellular telephone tower nearest to the location of the incident. This address is not the originating address of the 9-1-1 caller, and, therefore, may not be withheld. We also note you have marked multiple telephone numbers and addresses on some of the 9-1-1 call reports. It is unclear which of these telephone numbers and addresses are the originating telephone numbers and addresses provided by a 9-1-1 service supplier. Thus, to the extent the marked telephone numbers and addresses are the originating telephone numbers and addresses supplied by a 9-1-1 service supplier, this information must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The remaining marked telephone numbers and addresses may not be withheld on the basis. As you have claimed no further exceptions for this information, it must be released.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted incident reports pertain to pending criminal investigations. Based upon this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston[14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we agree section 552.108 is generally applicable to the information you have marked in the submitted incident reports.

Section 552.108, however, does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*, and includes information regarding an arrestee. See 531 S.W.2d at 186-88. We note the information you have marked to be withheld in report number 08-16201 includes basic information regarding the arrestee. Basic information regarding an arrestee must be released. See *Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information regarding an arrestee made public by *Houston Chronicle*). Thus, with the exception of basic information regarding the arrestee in report number 08-16201, the department may withhold the information you have marked in the submitted incident reports pursuant to section 552.108(a)(1) of the Government Code. We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

You claim the remaining information includes information protected by section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Therefore, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the information we have marked for released, the department must withhold the telephone numbers and addresses you have marked in the submitted 9-1-1 call reports under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. With the exception of basic information regarding the arrestee in report number 08-16201, the department may withhold the information you have marked in the submitted incident reports pursuant to section 552.108(a)(1) of the Government Code.¹ The department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code. The remaining information must be released.

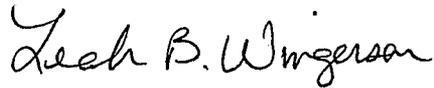
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

¹We note the arrestee's basic information includes the arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/cc

Ref: ID# 333417

Enc. Submitted documents

cc: Requestor
(w/o enclosures)